IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MS JUSTICE G.ROHINI**

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**WRIT PETITION NO : 17212 of 2004**

Between:

Malasani Adilakshamma, W/o. Malasani Papi Reddy,
R/o. Middivaripalle, H/o. Ananthapur District.

**..... PETITIONER**

AND

1 Kadiri Municipality, Rep. by its Commissioner,
Kadiri, Ananthapur District.
2 The Building Inspector, Kadiri Municipality,
Kadiri, Ananthapur District.
3 M. Victor, S/o. M. Zakarayya,
Water Tank Street, Kadiri, Anantapur District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, to declare the action of the Respondent No.1 and 2 herein attempting to grant sanction for construction of house to the 3rd respondent in Plot No.32 admeasuring Ac.0-05 cents in Sy.No.65 of Saidapuram Village, Kadiri Mandal, Anantapur District, as illegal, arbitrary and consequently direct the Respondent No.1 and 2 herein not to grant or entertain any application of the 3rd respondent for sanction of permission for construction of house, and to grant such other relief or reliefs as this Honourable Court deems fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.A.SANTHOSH KUMAR**

**Counsel for the Respondent Nos1 and 2: MRK.M.MAHENDER REDDY**

**Counsel for the Respondent No.3 : Mr. A. Prabhakara Sarma**

**The Court made the following :**

**ORDER:**

The petitioner claims to be the owner and possessor of the land admeasuring Ac.0.05 cents situated in Sy.No.65 of Saidapuram village, Kadiri Mandal, Ananthapur District. It is stated that one Sri. N.S.Muttu, who was an ex-serviceman, was allotted the said land bearing Plot No.32 in the year 1974 and he was in actual physical possession of the said land. After his death, his wife by name Mary Vijaya Kumari and Son Subash Chandra Bose succeeded to the said land. The petitioner entered into an agreement of sale with the legal heirs of N.S.Muttu for a sale consideration of Rs.9,000/- and he was put in possession of the said land. However, the 3rd respondent who is a stranger and not at all concerned with the said property started interfering with his possession and therefore, the petitioner filed O.S.No.105 of 2002 on the file of the Principal Junior Civil Judge, Kadiri seeking permanent injunction against the 3rd respondent herein and the same is pending. It is stated that the 3rd respondent, taking advantage of the pendency of the proceedings, has been interfering with his possession and he also submitted plans seeking approval of the 1st respondent-Municipality for construction of the house in the land in question. Hence, this writ petition seeking a declaration that the action of the respondents 1 and 2 is arbitrary and illegal and consequently to direct them not

to grant or entertain any application of the 3rd respondent for sanction of permission for construction of house.

Though no counter affidavit is filed on behalf of respondents 1 and 2, the 3rd respondent filed a detailed counter affidavit denying all the allegations made by the petitioner and stating that the assignment in favour of N.S.Muttu was cancelled long back and thereafter, he being an ex-serviceman was allotted Ac.0.03 cents out of the said Ac.0.05 cents of land under proceedings dated 21-09-1994 and the possession was also handed over and since then he has been in possession and enjoyment of the same. He also states that the 1st respondent by proceedings, dated 06.07.2004 has already granted permission to him for construction of the house and in pursuance of the same, he has already made the construction. A copy of the proceedings, dated 06.07.2004 has also been placed before this Court.

As can be seen a civil suit is pending between the same parties in respect of the property in question. That apart, the matter involves several disputed questions of fact, which cannot be investigated into in exercise of powers under Article 226 of the constitution of India. At any rate, since the 3rd respondent has already been granted permission, nothing survives for adjudication. Viewed from any angle the Writ Petition is misconceived and without any substance.

Accordingly, the Writ Petition is dismissed. No costs.

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G.ROHINI,J

Date; 07-12-2004

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To

1 The Commissioner, Kadiri Municipality,
Kadiri, Ananthapur District.
2 The Building Inspector, Kadiri Municipality,
Kadiri, Ananthapur District.
3. 2CD copies